IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6867 OF 2002

Smt.Sunanda Damodar Awchat Petitioner

versus

Changdeo Sahebrao Gaikwad
and others Respondents

S.A.Sawant & V.H.Kode, adv. for petitioner.
M.H.Solkar, AGP for R.5 to 7.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th December 2004

PC :

1. Heard Mr.Sawant for petitioner and learned AGP Mr.Solkar for respondents 5 to 7. Respondents 1 to 3 are served.

2. The writ petition is filed by landlady. Petitioner is claiming ownership rights in respect of agricultural land bearing Gat No.237/1 (old gat no.547) situated at Village Kedgaon, Tal.Daund, Dist. Pune.

3. It is the case of petitioner that one Dhondoba Balku Mali, grand father of respondent

no.1, was a tenant in respect of said land. He distributed the land amongst his children. Respondent no.1 sold land admeasuring 13R to respondent no.3 on 30th January 1995. As the land was held as tenant under Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "BTAL Act" for short), it is the case of the petitioner that transfer without permission of Collector was void. It is contended that on 12th October 1995 the Awal Karkoon, Daund was pleased to pass an order in respect of Mutation Entry of the land in question and recording sale of 30th January 1995. The petitioner has challenged the mutation in favour of purchaser and in that proceeding the matter was remanded in appeal back to the Tenancy Awal Karkoon. In that proceedings, according to the petitioner, statement was made that the land Gat No.237 is sold to Dr.Nahar in violation of Tenancy Act. The status of tenant was admitted by the first respondent. Reliance is placed by the petitioner on the statements recorded by the tenant (respondent no.1) of Mr.Nahar in this proceeding. The entry was cancelled by the Tenancy Awal Karkoon in Complaint No.7/1995. Reliance is placed on Exhibit-B which is the copy of order in that behalf.

4. Petitioner complained to the authorities that despite the aforesaid position no action is taken u/s 43 R/W Rule 45(f)(i) of BTAL Act and Rules. He submits that appropriate steps should have been taken by the authorities after taking cognizance of the transaction. However, according to the petitioner, respondent no.3 cancelled the earlier transaction and executed a fresh sale deed without permission in favour of respondent no.1. Subsequently the land admeasuring 20 Ares in the name of his wife has also been taken by Dr.Nahar from this gat No.237/1. Thus, there was a transaction of resale between 3rd respondent and 1st respondent and thereafter the 3rd respondent once again repurchased the land. The application was made for permission of this transaction and it appears that permission came to be granted by the Sub Divisional Officer, Baramati. The petitioner being aggrieved by permission granted by SDO, Baramati, preferred a revision application before Maharashtra Revenue Tribunal. The said revision application was dismissed and that is how the petitioner is before this Court.

5. Respondent no.5 has filed affidavit for

itself and 6th respondent. In that affidavit it is contended that the transaction between respondent nos.1 and 3 of 30th January 1995 is bad in law but subsequently the transaction between respondents 3 and 1 has been permitted in accordance with law.

6. Be that as it may, in my view, the permission granted would not affect right of petitioner to approach a competent civil court for declaration of his title over the land in question and needless to observe that upon institution of such suit the claims of respective parties therein would be decided on their own merits and in accordance with law.

7. Status-quo granted by this Court on 6th January 2003 to continue for a period of six weeks to enable the petitioner to take out appropriate proceedings. Petition disposed of.

(S.C.DHARMADHIKARI, J.)